HOAGLAND, LONGO, MORAN, DUNST & DOUKAS, LLP
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New Brunswick, NJ 08903
(732) 545-4717
Attorneys for Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick

Plaintiff, MICHAEL BOSWELL vs. Defendants, STEVE EOON, KIRSTEN BYRNES, CHRISTINA EICKMAN, PTL. JAMES FESITER, NEW BRUNSWICK POLICE DEPARTMENT, CITY OF NEW BRUNSWICK; AND JOHN DOES (#1 THRU #5)	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY CIVIL ACTION NO: 3:08-cv-5098(GEB-LHG) **AMENDED ANSWER, SEPARATE DEFENSES, CROSSCLAIMS, ANSWER TO ALL CROSSCLAIMS, REQUEST FOR DISCOVERY, DESIGNATION OF TRIAL COUNSEL, AND JURY DEMAND** **ANSWER ELECTRONICALLY FILED**

These Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, by way of Amended Answer to Plaintiffs' Complaint, say:

FIRST COUNT

(State Law Negligence Claim)

1. These Defendants have insufficient knowledge to either admit or deny the allegations contained in paragraph 1.

2. These Defendants have insufficient knowledge to either admit or deny the allegations contained in paragraph 2.

3. These Defendants have insufficient knowledge to either admit or deny the allegations contained in paragraph 3.

4. These Defendants have insufficient knowledge to either admit or deny the allegations contained in paragraph 4.

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5. These Defendants have insufficient knowledge to either admit or deny the allegations contained in paragraph 5.

6. These Defendants make no answer as the allegations contained in this paragraph do not apply to these Defendants, however deny the allegations of this paragraph as they may be deemed related to these Defendants.

7. These Defendants deny the allegations contained in paragraph 7.

WHEREFORE, these Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, demand judgment dismissing the Complaint, together with costs and counsel fees.

SECOND COUNT

(State Law Negligence Claim)

1. These Defendants repeat and reiterate each and every response to the prior allegations as if same were set forth herein at length.

2. These Defendants have insufficient knowledge to either admit or deny the allegations contained in paragraph 2.

3. These Defendants have insufficient knowledge to either admit or deny the allegations contained in paragraph 3.

4. These Defendants deny the allegations contained in paragraph 4.

5. These Defendants deny the allegations contained in paragraph 5.

6. These Defendants deny the allegations contained in paragraph 6.

7. These Defendants deny the allegations contained in paragraph 7.

8. These Defendants deny the allegations contained in paragraph 8.

9. These Defendants deny the allegations contained in paragraph 9.

10. These Defendants deny the allegations contained in paragraph 10.

11. These Defendants have insufficient knowledge to either admit or deny the allegations contained in paragraph 11.

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12. These Defendants deny the allegations contained in paragraph 12.

13. These Defendants deny the allegations contained in paragraph 13.

14. These Defendants deny the allegations contained in paragraph 14.

WHEREFORE, these Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, demand judgment dismissing the Complaint, together with costs and counsel fees.

THIRD COUNT

(Civil Rights Claim Under 42 U.S.C. Sec. 1983)

1. This Defendant repeats and reiterates each and every response to the prior allegations as if same were set forth herein at length.

2. These Defendants have insufficient knowledge to either admit or deny the allegations contained in paragraph 2.

3. These Defendants deny the allegations contained in paragraph 3.

4. These Defendants deny the allegations contained in paragraph 4.

5. These Defendants deny the allegations contained in paragraph 5.

6. These Defendants deny the allegations contained in paragraph 6.

7. These Defendants deny the allegations contained in paragraph 7.

WHEREFORE, these Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, demand judgment dismissing the Complaint, together with costs and counsel fees.

FOURTH COUNT

(Civil Rights Claim Under 42 U.S.C. Sec. 1983)

1. These Defendants repeat and reiterate each and every response to the prior allegations as if same were set forth herein at length.

2. These Defendants deny the allegations contained in paragraph 2.

3. These Defendants deny the allegations contained in paragraph 3.

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4. These Defendants deny the allegations contained in paragraph 4.

5. These Defendants deny the allegations contained in paragraph 5.

6. These Defendants deny the allegations contained in paragraph 6.

WHEREFORE, these Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, demand judgment dismissing the Complaint, together with costs and counsel fees.

FIRST SEPARATE DEFENSE

If the Plaintiffs suffered damages, the same were caused by the Plaintiffs' sole negligence.

SECOND SEPARATE DEFENSE

If the Plaintiffs suffered damages, the same were caused by the Plaintiffs' contributory negligence.

THIRD SEPARATE DEFENSE

If the Plaintiffs suffered damages, the same were caused by third persons over whom these Defendants had no control.

FOURTH SEPARATE DEFENSE

The incident which forms the basis of this litigation and which allegedly caused the injuries and damages to Plaintiffs was proximately caused or contributed to by the fault of third parties not parties to this suit. The responsibility of these Defendants and the right of Plaintiffs to recover in this litigation can only be determined after the percentages of responsibility of all parties to this litigation have been determined. Accordingly, these Defendants seek an adjudication of the percentage of fault of the Plaintiffs and each and every person whose fault contributed to this incident.

FIFTH SEPARATE DEFENSE

Plaintiffs' Complaint fails to state a cause of action upon which relief can be granted.

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SIXTH SEPARATE DEFENSE

The Plaintiffs' cause of action is barred by the applicable Statute of Limitations and/or Repose.

SEVENTH SEPARATE DEFENSE

These Defendants did not violate any duty owed to the Plaintiffs under common law, statute, regulations or standards.

EIGHTH SEPARATE DEFENSE

These Defendants' conduct was not negligent.

NINTH SEPARATE DEFENSE

These Defendants' conduct was not the proximate cause of the Plaintiffs' alleged damages.

TENTH SEPARATE DEFENSE

At the time and place aforesaid, Plaintiffs and/or Co-Defendant(s) were negligent, barring or limiting recovery in whole or in part, and these Defendants plead the Comparative Negligence Statute as to all parties.

ELEVENTH SEPARATE DEFENSE

The alleged damages complained of were due to unavoidable circumstances and causes beyond the control or fault of these Defendants.

TWELFTH SEPARATE DEFENSE

These Defendants have no policy, scheme, practice nor custom to violate the constitutional rights of any of their citizens, irrespective of their ethnic backgrounds, nor do these Defendants have a custom, policy, scheme or practice to tolerate or permit violation of constitutional rights.

THIRTEENTH SEPARATE DEFENSE

These Defendants deny the allegations of improper conduct as set forth in the Plaintiffs' Complaint; however, the alleged misconduct does not rise to the level of a Constitutional violation.

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FOURTEENTH SEPARATE DEFENSE

These Defendants, in carrying out their duties, acted in good faith and without malicious intent to deprive Plaintiffs of their Constitutional rights.

FIFTEENTH SEPARATE DEFENSE

No malicious intent of causing a deprivation of Plaintiffs' Constitutional rights has been factually set out against these Defendants.

SIXTEENTH SEPARATE DEFENSE

Plaintiffs have failed to exhaust all applicable administrative remedies and are therefore barred from recovery.

SEVENTEENTH SEPARATE DEFENSE

These Defendants reserve the right to apply to this Court for the imposition of sanctions against the Plaintiffs and counsel, pursuant to Rule 11, and to make an application for counsel fees and costs of suit, pursuant to Section 1988 of Title 42 of the United States Code Annotated on the basis that the within cause of action is without merit, is frivolous and has been instituted by the Plaintiffs in bad faith and with the intent to harass these Defendants and to cause them to incur great expenses in defense of same, all to these Defendants' damage.

EIGHTEENTH SEPARATE DEFENSE

Without admitting Plaintiffs' civil rights were violated, these Defendants aver that in any event these Defendants are shielded from liability for civil damages because the alleged conduct did not violate clearly established statutory and/or constitutional rights of which a reasonable person would have known.

NINETEENTH SEPARATE DEFENSE

At all times relevant hereto, these Defendants were protected by a qualified privilege and as such the Plaintiffs are barred from any recovery herein.

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TWENTIETH SEPARATE DEFENSE

Without admitting Plaintiffs' civil rights were violated, Plaintiffs' claims are not actionable inasmuch as there is no evidence or allegation that the alleged governmental misconduct was the result of deliberate indifference by these Defendants.

TWENTY-FIRST SEPARATE DEFENSE

At no time relevant to this litigation was the Plaintiff deprived of life, liberty or property thereby precluding the Plaintiffs from maintaining any causes of action for violation of civil rights.

TWENTY-SECOND SEPARATE DEFENSE

At no time relevant to this litigation did the Plaintiffs sustain any violation of their civil rights pursuant to a governmental policy or custom thereby precluding the Plaintiffs from maintaining any causes of action for violation of civil rights.

TWENTY-THIRD SEPARATE DEFENSE

At all times relevant to this litigation, these Defendants acted in good faith and entertained an honest, reasonable belief that these Defendants' actions were reasonable and necessary thereby precluding the Plaintiffs from maintaining any causes of action for violation of civil rights.

TWENTY-FOURTH SEPARATE DEFENSE

If the Plaintiff suffered damages, the same were caused by the negligence of the Co-Defendants and any recovery to which the Plaintiff would otherwise be entitled as against these Defendants must be reduced by the application of the standard of comparative negligence set forth in N.J.S.A. 2A:15-5.1 et seq.

TWENTY-FIFTH SEPARATE DEFENSE

If the Plaintiff suffered injuries or damages, the same were caused by the Co-Defendant(s), either jointly, severally or in the alternative, and any recovery to which the Plaintiff would otherwise be entitled as against these Defendants must be reduced by the application of the standard of comparative negligence set forth in N.J.S.A. 2A:15-5.1, et seq.

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TWENTY-SIXTH SEPARATE DEFENSE

If the Plaintiff suffered damages, the same were caused by the negligence, breach of contract or breach of express or implied warranty of the Co-Defendant(s), jointly, severally or in the alternative.

TWENTY- SEVENTH SEPARATE DEFENSE

These Defendants' conduct did not deprive Plaintiffs of rights, privileges or immunities secured by the Constitution or laws of the United States.

TWENTY- EIGHTH SEPARATE DEFENSE

Plaintiffs fail to establish a prima facie case of violation of 42 U.S.C. 1983.

TWENTY-NINTH SEPARATE DEFENSE

There was no intentional substantive conspiracy to violate Plaintiffs' Constitutional rights.

THIRTIETH SEPARATE DEFENSE

These Defendants are entitled to the defense of qualified immunity.

THIRTY-FIRST SEPARATE DEFENSE

Any injury occurring to the Plaintiff was the direct and proximate result of the Plaintiff's own conduct.

THIRTY-SECOND SEPARATE DEFENSE

These Defendants, if involved at all, acted within the scope of their authority and in good faith in the performance of his duties.

THIRTY-THIRD SEPARATE DEFENSE

These Defendants, if involved at all, acted reasonably and properly under the circumstances.

THIRTY-FOURTH SEPARATE DEFENSE

All of the actions of these Defendants were performed in good faith and in the performance of their duties, and they are, therefore, entitled to qualified immunity.

THIRTY-FIFTH SEPARATE DEFENSE

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Any claim of Plaintiff is the direct result of actions of other unnamed Defendants over whom these Defendants have no control.

THIRTY-SIXTH SEPARATE DEFENSE

These Defendants acted on reasonable grounds and without malice and, therefore, are not answerable to the Plaintiff in damages.

THIRTY-SEVENTH SEPARATE DEFENSE

This matter is a frivolous suit and these Defendants should be entitled to damages for defending same.

THIRTY-EIGHTH SEPARATE DEFENSE

These Defendants deny that any of their actions were malicious or reckless.

THIRTY-NINTH SEPARATE DEFENSE

These Defendants could not and did not foresee the risks of the damages Plaintiff alleges.

FORTIETH SEPARATE DEFENSE

The business of these Defendants is in the public interest, convenience, and necessity, and it is operated and conducted in compliance with the law.

FORTY-FIRST SEPARATE DEFENSE

These Defendants deny that Plaintiff has suffered any losses or damages; in any event, any losses or damages sustained by Plaintiff are de minimis, remote, speculative, and/or transient and, hence, are not cognizable at law.

FORTY-SECOND SEPARATE DEFENSE

Plaintiff failed to mitigate any damages allegedly sustained by him.

FORTY-THIRD SEPARATE DEFENSE

Plaintiff's Complaint is barred by the Doctrine of Collateral Estoppel.

FORTY-FOURTH SEPARATE DEFENSE

Plaintiff's Complaint is barred in whole or in part by the Doctrine of Waiver.

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FORTY-FIFTH SEPARATE DEFENSE

Plaintiff's Complaint is barred in whole or in part by the Doctrine of Estoppel.

FORTY-SIXTH SEPARATE DEFENSE

These Defendants did not misuse the police process.

FORTY-SEVENTH SEPARATE DEFENSE

These Defendants did not fail to instruct, supervise, control & discipline.

FORTY-EIGHTH SEPARATE DEFENSE

These Defendants did not engage in extreme and outrageous conduct.

FORTY-NINTH SEPARATE DEFENSE

There was insufficiency of process as to these Defendants.

FIFTIETH SEPARATE DEFENSE

There was insufficiency of service of process as to these Defendants.

FIFTY-FIRST SEPARATE DEFENSE

The Court lacks jurisdiction over the person of these Defendants.

FIFTY-SECOND SEPARATE DEFENSE

The Court lacks jurisdiction over the subject matter of this action.

FIFTY-THIRD SEPARATE DEFENSE

Venue of this action is improper and these Defendants reserve the right to move for transfer.

FIFTY-FOURTH SEPARATE DEFENSE

These Defendants reserve the right to move for a dismissal of the Plaintiff's Complaint pursuant to Rule 11.

FIFTY-FIFTH SEPARATE DEFENSE

These Defendants are immune from suit by virtue of the applicable Statutes of the State of New Jersey.

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FIFTY-SIXTH SEPARATE DEFENSE

This action is barred by reason of the substantive provisions of N.J.S.A. 59:1-1 et seq., providing for immunity to these Defendants under the facts and circumstances as pleaded.

FIFTY-SEVENTH SEPARATE DEFENSE

These Defendants expressly and specifically reserve and implead any and all rights, remedies and immunities pursuant to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq. and, as such, the Plaintiff is barred from recovery.

FIFTY-EIGHTH SEPARATE DEFENSE

These Defendants assert all of the immunities, rights and privileges afforded by the Tort Claims Act, N.J.S.A. 59:1-1 et seq., including but not limited to Sections 2-2, 2-3, 2-6, 2-7, 3-1, 3-2, 3-3, 3-4, 3-5, 3-7, 3-8, 3-10, 4-1, 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 4-9, 5-4, 8-3, 8-4, 8-5, 8-6, 8-7, 8-8, 8-10, 9-2, 9-3, 9-4 and 9-6.

FIFTY-NINTH SEPARATE DEFENSE

This action is barred by reason of the procedural provisions of N.J.S.A. 59:1-1 et seq., in that Plaintiff did not comply with the preconditions to filing suit.

SIXTIETH SEPARATE DEFENSE

The Plaintiff failed to properly comply with the notice provisions of the Tort Claims Act.

SIXTY-FIRST SEPARATE DEFENSE

Plaintiff is barred from recovery for failure to present and otherwise file a Notice of Claim within the time, form and place as required by Chapter 8 of Title 59 of the New Jersey Revised Statutes and, as such, these Defendants are immune from liability and the Plaintiff is barred from recovery.

CROSSCLAIMS

These Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, by way of Crossclaims against the Co-Defendants, Steve Eoon, Kirsten Byrnes and Christina Eickman, say:

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FIRST COUNT

1. Although these Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, deny any liability whatsoever, they nonetheless assert that any and all injuries and damages sustained by the Plaintiffs were the proximate result of the negligence of the Co-Defendants and demand contribution from Steve Eoon, Kirsten Byrnes and Christina Eickman for the proportionate share of any and all sums that may be adjudged against these Defendants in this action.

WHEREFORE, these Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, demand a judgment of contribution from the Co-Defendants, Steve Eoon, Kirsten Byrnes and Christina Eickman, together with interest, attorney's fees, costs of suit, and such other relief as this Court deems appropriate and equitable.

SECOND COUNT

1. These Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, repeat and reallege each and every allegation contained in the First Count as if the same were more fully set forth at length herein and made a part hereof.

2. Although these Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, deny any liability whatsoever, they nonetheless assert that any and all injuries and damages sustained by the Plaintiffs were the proximate result of the negligence of Co-Defendants, Steve Eoon, Kirsten Byrnes and Christina Eickman, which negligence was primary and active, and if these Defendants are found liable to the Plaintiffs with respect to said injuries and damages, such liability resulted solely from secondary, imputed, vicarious or passive negligence, and Co-Defendants aforesaid is liable to these Defendants, by way of common law indemnification, for any and all sums which these Defendants may be required to pay in this action.

WHEREFORE, these Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, demand judgment, by way of full indemnification, against

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the Co-Defendants, Steve Eoon, Kirsten Byrnes and Christina Eickman, for any and all sums which these Defendants may be required to pay in this action, together with interest, attorney's fees, costs of suit, and such other relief as this Court deems appropriate and equitable.

ANSWER TO ALL CROSSCLAIMS

These Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, by way of Answer to any and all Crossclaims, say:

These Defendants deny each and every allegation contained in the Co-Defendants Crossclaims and therefore leaves Crossclaimants to their proofs.

REQUEST FOR DISCOVERY

PLEASE TAKE NOTICE THAT, demand is hereby made of the Plaintiff for complete compliance with Rule 26, for all discovery items/documentation.

DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE THAT, Craig L. Corson, Esq., has been designated as trial counsel on behalf of Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick.

JURY DEMAND

These Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, hereby demand a trial by jury in accordance with Federal Rule of Civil Procedure 30.

HOAGLAND, LONGO, MORAN, DUNST & DOUKAS, LLP
Attorneys for Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick

BY: ____________________
CRAIG L. CORSON

DATED: May 6, 2009

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PROOF OF MAILING

I, **Craig L. Corson, Esq.**, hereby certify that on this date that I served via electronic mail, a true and accurate copy of the within Answer to Plaintiffs' Complaint on behalf of Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, to the following:

Mr. William T. Walsh
Clerk, United States District Court
Martin Luther King, Jr. Federal Building and US Courthouse
50 Walnut Street
Newark, NJ 07102

I hereby certify that on this date that I served via electronic and regular mail, a true and accurate copy of the within Answer to Plaintiff's Complaint on behalf of Defendants, Patrolman James Feister, New Brunswick Police Department, and City of New Brunswick, to the following:

Richard Galex, Esq.
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Attorney(s) for Defendant,
Mr. Steve Eoon

Stephen R. Dumser, Esq.
Gercke & Dumser, P.C.
1236 Brace Road, Suite E
Cherry Hill, NJ 08034
Attorney(s) for Defendants,
Ms. Kirsten Byrnes & Ms. Christina Eickman

I certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.

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CRAIG L. CORSON

DATED: May 6, 2009
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